

ORDER NO. 78909

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| IN THE MATTER OF THE | * | BEFORE THE |
| COMMISSION'S INQUIRY INTO THE | | PUBLIC SERVICE COMMISSION |
| COMPETITIVE SELECTION OF | * | OF MARYLAND |
| ELECTRICITY SUPPLIERS | | <hr/> |
| STANDARD OFFER SERVICE. | * | CASE NO. 8908 |
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On December 5, 2003, in response to a memorandum from the Public Service Commission's (Commission) technical consultants,¹ the Commission requested that interested parties file comments regarding a proposed supplemental agreement to the Full Requirements Service Agreement (FSA).² In addition to commenting on the supplemental agreement, the parties were requested to address six specific questions which, in general, pertained to the effect of adopting the supplemental agreement.

A number of interested parties responded to the Commission's request for comments.³ Most of the commenters objected to the adoption of the supplemental agreement. Many parties raised concerns regarding accounting-related risks and regulatory uncertainty. With regard to the accounting treatment, the utilities raised concerns that adoption of the

¹ Boston Pacific Company, Inc. and Dickstein, Shapiro, Morin & Oshinsky LLP: (Boston Pacific)

² The proposed supplemental agreement was designed to address an issue raised by two investment banks. This issue was raised after the Commission's approval of the Settlement Agreement and the FSA.

³ Comments were filed by Baltimore Gas & Electric Co., (BGE), Potomac Electric Power Company (PEPCO), Allegheny Power (AP), Commission Staff (Staff), the Office of People's Counsel, the Mid-Atlantic Power Supply Association (MAPSA), Constellation Power Source, Mirant Mid-Atlantic, LLC (Mirant) and Consolidated Edison Energy, Inc. Joint Comments were filed by J. Aron & Company and Morgan Stanley Capital Group, Inc. (investment banks). The investment bank also filed supplemental comments on January 9, 2004.

supplemental agreement could adversely impact the utilities' ability to use accrual accounting.⁴ Many commenters suggested that changes such as the proposed supplemental agreement should be pursued through the Procurement Improvement process pursuant to Paragraph 12 of the Phase II Settlement.⁵ Comments in support of the proposed supplemental agreement were filed by Mirant and the investment banks.

In light of the accounting-related uncertainties as well as the risk to the process engendered by instituting a significant change so close to the first round of bidding, the Commission finds that adoption of the proposed supplemental agreement would not be in the public interest at this time. However, the Commission finds that this issue should be resolved after the fourth tranche of bidding occurs. Therefore, Staff is directed to implement the Procurement Improvement process pursuant to Paragraph 12 of the Phase II Settlement.⁶ Essentially, the parties should determine what changes are necessary in order for investment banks, and possibly others, to use mark to market accounting while the utilities continue to use the accrual accounting method. In order to facilitate the resolution of this matter, those utilities who have an outside auditor examining this issue are directed to file their auditors report on the accounting issue by April 30, 2004.

In an unrelated matter, some parties have questioned Boston Pacific's raising of this issue to the Commission.⁷ The Commission disagrees with these commenters narrow view of the consultant's role. In Order No. 78710, the Commission expressly stated that the consultants are to assist the Commission in any manner necessary to monitor and

⁴ See, e.g., BGE comments at 3-4, PEPCO comments at 3, AP comments at 3-4.

⁵ See, e.g., BGE comments at 2, PEPCO comments at 6, AP comments at 2, MAPSA comments at 2.

evaluate all aspects of Standard Offer Service (SOS).⁸ The Commission expects the consultants to bring to the Commission's attention any issue the consultants believe warrants the Commission's consideration. Obviously, as this case demonstrates, no issue will be resolved without input from the interested parties. The Commission commends all the parties for their proactive attempts to ensure that the bidding process is successful and recognizes that these efforts are an integral part of the procurement process.

Finally, Consolidated Edison Energy, Inc. (CEE) filed a Motion to Intervene Out of Time on July 17, 2003. CEE also filed a Request to Respond Out of Time on January 5, 2004. After carefully considering these matters, the Commission hereby grants both CEE's Motion to Intervene and the Request to Respond Out of Time. However, the Commission reiterates that because CEE is entering the proceedings late, it is required to accept the proceeding and record in its current posture.

By Direction of the Commission,

Felecia L. Greer
Executive Secretary

FLG:nrm

Dated: January 9, 2004

⁶ The Commission does not envision Staff beginning this process until the final tranche of bidding is complete.

⁷ See, e.g., BGE comments at 5, MAPSA comments at 3.

⁸ *In the Matter of the Commission's Inquiry into the Competitive Selection of Electricity Supplier/Standard Offer Services*, Case No. 8908, Phase II (Sept. 30, 2003) at page 30-33.